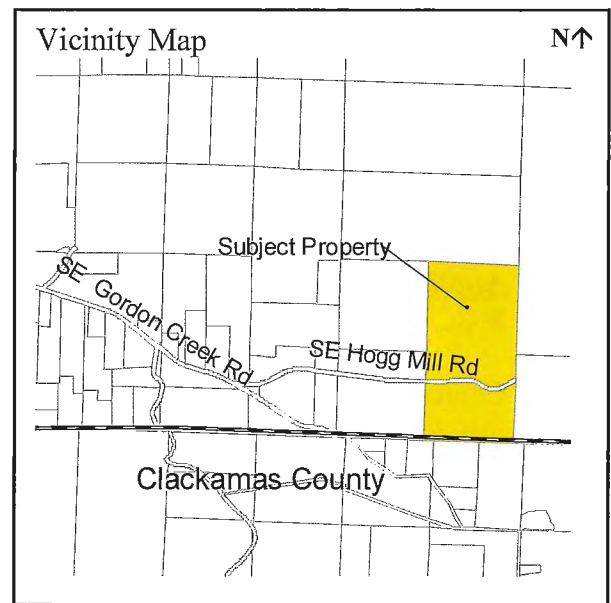


1600 SE 190th Avenue, Portland Oregon 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

NOTICE OF DECISION

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T2-2013-3194
Permit: Planning Director's Determination
Location: 44001 SE Hogg Mill Road
Tax Lot 900, Section 20,
Township 1S, Range 5E, W.M.
R995200070
Applicants: Dale Burkholder/Ed Hanning/Michael
Robinson
Base Zone: Commercial Forest Use-4 (CFU-4)
Overlays: Significant Environmental Concern –
Stream (SEC-s)



Summary: Planning Director's Determination that the manufactured home approved in 1988; removed and replaced in 2004 by another manufactured home; still in title to the current property owner and could be brought back onto the property can be considered a lawfully established dwelling under MCC 35.2220(D) and replaced with the manufactured home currently on the property or by another dwelling.

Decision: Approved.

Unless appealed, this decision is effective Thursday, July 17, 2014

Issued by:

By: 
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Thursday, July 3, 2014

Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Don Kienholz, Staff Planner at 503-988-3043, ext. 29270 or don.d.kienholz@multco.us.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is July 17, 2014 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 35.2220 Allowed Uses, MCC 37.0740 Interpretations and Requests for Lot of Record Verification.

Copies of the referenced Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at <http://www.co.multnomah.or.us/landuse> or <http://web.multco.us/transportation-planning>.

Scope of Approval

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. **Required permits from the City of Gresham Building Department were not obtained when the existing manufactured home was placed on the site in 2004. The property owner shall obtain required permits from the City of Gresham. Prior to submitting building permits to the City of Gresham, the property owner shall obtain sign off from Multnomah County Land Use Planning.**
2. **Once the property owner has obtained all required building permits for the existing manufacture home from City of Gresham, copies of all permits must be submitted**

to Multnomah County Land Use Planning within 30 days of receipt from the City of Gresham.

Note: Once this decision is final, application for building permits may be made with the City of Gresham. When ready to have building permits signed off, the applicant shall call the Staff Planner, Don Kienholz, at (503) 988-3043 ext. 29270 or don.d.kienholz@multco.us, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Gresham. Three (3) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee of \$70.00 will be collected.

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.00 Project Description:

Staff: The applicant is requesting a Planning Director’s Determination that the manufactured home approved in 1988, removed and replaced in 2004 by different manufactured home, could be brought back onto the property and considered a lawfully established dwelling under MCC 35.2220(D) and then be replaced with the manufactured home currently on the property or by another dwelling.

2.00 Property Description & History (if needed):

Staff: The subject property is located at the end of SE Hogg Mill Road in the East of the Sandy River Rural Area Plan just north of the Clackamas County line. To the east is the beginning of the Mount Hood National Forest and to the west is a rural community of forested properties off of Gordon Creek Road.

The history of the property’s zoning and permit record is as follows:

- 1953 – Original home established on the subject property south of SE Hogg Mill Road.
- 1955 – The County adopts its first building code and first zoning code. However, the codes were not applicable east of the Sandy River.
- 1958 – The first zoning code was adopted for East of the Sandy River. The property was zoned F2 which contained dimensional standards and limitations on dwellings.
- October 6, 1977 – The property was rezoned to Multiple Use Forest – 20 (MUF-20). The zone had a larger minimum lot size and additional restrictions on dwellings.
- August 1980 – The property was rezoned to Multiple Use Forest – 38 (MUF-38). The MUF-38 zone was the precursor to the forest resource zones that had increased lot size requirements and restrictions on the establishment of dwellings.
- 1988 – The owner applied for and received approval for a replacement dwelling. The replacement dwelling was on the north side of SE Hogg Mill Road.
- 1993 – The property was rezoned to Commercial Forest Use.
- 1998 – The property was rezoned to Commercial Forest Use – 4 (CFU-4).
- 2004 – The dwelling placed on the property in 1988 was replaced by the owner and added onto, but without the benefit of land use or building permits.
- 2013 – The owners applied for a verification of a non-conforming use for the manufactured home placed on the property in 2004. The County denied the verification.

3.00 Replacement of an Existing Lawfully Established Habitable Dwelling:

3.01 MCC 35.2220(D)- Allowed Uses

(D) Alteration, maintenance, replacement or restoration of an existing lawfully established *habitable dwelling* as defined in MCC 33.0005 and located within 100-feet from an existing dwelling.

(1) In the case of a replacement dwelling, the existing dwelling shall be removed, demolished or converted to an allowable non-residential use within three months of the completion or occupancy of the replacement dwelling.

Staff: In the CFU-4 zone, dwellings are not uses permitted outright; they must be established through a template test, large acreage tract, or heritage tract dwelling evaluation. Existing dwellings on CFU-4 zoned properties may only be replaced through the provision above. Below provides an analysis of issues needed to make a determination for this Planning Director Interpretation Request.

3.02 Threshold Legal Issue

Staff: MCC 35.2220(D) authorizes the replacement of an existing dwelling that was lawfully established and is habitable. One interpretation of the “existing” requirement could be that this provision only applies to a dwelling that is on the property at the time that the application is filed (and perhaps at the time of decision). Stating this interpretation in the converse, this provision would not apply where, as here, the replacement has already occurred such that the dwelling on the property at the time of application is the actual replacement dwelling and applicant seeks after-the-fact approval for such dwelling under MCC 35.2220(D).

Given the particular and specific facts of this case, the County need not determine whether the foregoing interpretation of the term “existing” MCC 35.2220(D) is the correct interpretation. In this particular case, applicant still owns the manufactured home that was, as explained below, lawfully established on the property in 1988 and habitable at the time it was replaced in 2004 by the current manufactured dwelling for which the present approval is sought. This means that the applicant has the ability to avoid the negative consequence that results from the interpretation described above by returning the lawful 1988 dwelling to the property and re-establish that lawful use.

The Planning Director finds that it is enough that the applicant could re-establish the lawful habitable dwelling that may be replaced under MCC 35.2220(D). The County will not demand such action on the part of applicant just to avoid a potential interpretive issue—to do so would waste both the applicant’s and the public’s resources. Accordingly, the Planning Director finds that, under the narrow and specific facts and circumstances of this application, MCC 35.2220(D) allows for the replacement authorization sought by applicant so long as applicant proves that the 1988 manufactured dwelling was lawfully established and was habitable at the time it was replaced in 2004 and satisfies all other review standards and criteria.

3.03 Was the 1988 Dwelling Lawfully Established?

Staff: The 1988 manufactured home was approved as a replacement dwelling of the original 1950’s home located on the southern portion of the property. The manufactured home received a building permit approval with permit MC-487 and zoning approval (Exhibit A.11) on October 25, 1988. Additionally, the manufactured home received septic approval from the City of Portland (Exhibit A.11) in November of 1988. Those historical permits demonstrate the dwelling was lawfully established on the subject property.

The 1988 manufactured home was lawfully established.

3.04 Was the 1988 Dwelling Habitable?

Staff: The applicant provided an RMLS report from 2000 (Exhibit A.6) when the property was being sold that demonstrates the exterior of the manufactured home was intact and habitable. Additionally, pictures of the family occupying the 1988 manufactured home were also included demonstrating the interior was habitable. While not every required feature was included in a photograph, it is clear the home was in good shape and occupied by a family that included adults and children – clearly not a hazardous situation. A reasonable person can infer that the home had all the required components to be habitable. Based on this evidence, staff believes the home was habitable when it was removed from the property in 2004.

The 1988 manufactured home was habitable.

3.05 Was the replacement of the 1988 manufactured home with that manufactured home that was place on site in 2004 lawful?

Staff: The simple technical answer is “No.” However, could the replacement have been lawful? Yes. Replacement of a manufactured home with another manufactured home is relatively simple and only requires demonstrating the existing home was lawfully established and habitable – both of which the applicant has demonstrated in this case.

Because the manufactured home has all the essential components (Plumbing, electrical, structural) built and inspected off site, the only building requirement is that the connections to the main utilities are done properly. This consists of connecting the new manufactured home to an existing septic system and plugging the existing electrical into the new home’s electrical box.

The applicant provided billing statements for Andy Gainer, the occupant of the 1988 manufactured home, for connection of the newer 2004 replacement manufactured home (Exhibit A.6) to existing septic and water systems. Since Andy Gainer was the renter of the property and not the owner, it is conceivable that he thought the home had already been lawfully established and since the replacement was a manufactured home for a manufactured home and only required ‘plugging in’ the new home, no other review was required.

The only thing keeping the replacement from being lawful was simply a stamping off by Multnomah County Land Use and Transportation Planning in 2004.

The replacement was not technically lawful.

3.06 Can the error of not obtaining a replacement stamp from Land Use Planning and building permits from the City of Gresham for the swapping of the 2004 manufactured home for the 1988 manufactured home be rectified?

Staff: To replace a manufactured home with another manufactured home in the CFU-4 zoning district with no overlays is an over-the-counter process. One must demonstrate the current dwelling was lawfully established and currently habitable. The applicant has

done that. The applicant has also demonstrated the land owner still has the original 1988 manufactured home in their ownership (Exhibit A.6) by providing the manufacturing ID number that matches the Assessment and Taxation information (Exhibit B.1). The applicant has the ability to place the permitted manufactured home back on the subject property and restore the property to its last lawful dwelling status. This is considerably different than if there had been a conventionally constructed permanent dwelling as either the house being replaced, or replacing a manufactured dwelling since the replacement would be essentially irreversible.

If the 2004 manufactured home were removed and the 1988 dwelling placed back on site in the originally approved location and connected to the permitted connections, the property would be in compliance with the 1988 permit and eligible for a dwelling replacement – similar to when an unlawfully divided property is put back into its last lawful configuration. In the current situation, the applicant has the clear ability to correct the manufactured home replacement. Since it is plausible to rectify the manufactured home replacement, the Planning Director determines that the 1988 manufactured home can be replaced by the 2004 manufactured home. The 2004 manufactured home still requires zoning approval and building permits to be a lawful replacement and can be accomplished with a condition of approval.

Until the 2004 manufactured home receives the required permits, it cannot be considered a lawful dwelling and cannot be replaced.

The replacing of the 1988 manufactured home with the 2004 manufactured home can be corrected with conditions of approval.

4.00 Conclusion

Based on the findings and other information provided above, the Planning Director Determines the 1988 manufactured home was lawfully established and is habitable and can be replaced by the 2004 manufactured home provided the 2004 manufactured home obtains the required building permits for placement. This approval is subject to the conditions of approval established in this report.

5.00 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2013-3149 at the Land Use Planning office.

Exhibit #	# of Pages	Applicant Exhibits
A.1	1	General Application Form
A.2	1	December 3, 2013 Site Plan
A.3	7	Real Estate Pictures of Manufactured Home Placed on Subject Property in 2004 and Accessory Buildings
A.4	3	Applicant’s December 3, 2013 Narrative

A.5	5	Applicant's Revised Narrative (January 14, 2014)
A.6	6	Ownership documentation for both manufactured dwellings.
A.7	11	Land Use and Building Permit History
A.8	1	Photos of use for the 1988 manufactured home.
'B'	#	Staff Exhibits
B.1	2	A&T Property Information